

Aleutians East Borough Coastal Management Plan

Public Review Draft June 2005

Chapter 4: Enforceable Policies

4.1 Introduction

This chapter establishes the enforceable policies for the AEB coastal management plan. The first section of this chapter includes a discussion of the importance of enforceable policies. The second section includes a description of the criteria for enforceable policies resulting from changes made to ACMP statutes in 2003 and regulations in 2004. The third section includes the enforceable policies. The fourth section provides a general description of area designations made under 11 AAC 114.250. Finally, the last section provides administrative policies that establish expectations regarding commitments of the AEB and expectations for state and federal agencies and project applicants.

4.2 Importance of Enforceable Policies

This chapter outlines the enforceable policies for the Aleutians East Borough (AEB) Coastal Management Plan (CMP). Projects that occur within the AEB's coastal zone and trigger a "consistency review" must be found consistent with these enforceable policies. As well, projects on federal land within the borough's coastal zone or in the adjacent federal waters of the Outer Continental Shelf (OCS) must be consistent with AEB enforceable policies if they may affect resources or uses of the coastal zone. According to federal law, projects proposed by a federal agency (i.e., federal activities) must be consistent with the enforceable policies to the maximum extent practicable if there are coastal effects, regardless of where the activities occur. Projects requiring a state or federal permit must be fully consistent with the ACMP enforceable policies.

The AEB encourages applicants and state and federal agencies to refer to the administrative policies at the end of this chapter. While not enforceable, the administrative policies provide guidance for applicants, state and federal agencies and the AEB. Administrative policies outline the commitments of the AEB to its residents for consultation and coordination. As well, administrative policies provide direction to applicants and state and federal agencies regarding proper consultation procedures. They also highlight other borough, state or federal requirements that an applicant must follow.

4. 3 Criteria for Enforceable Policies

The Alaska State Legislature passed legislation in 2003 that established new criteria for district enforceable policies. Specifically, AS 46.40.070(a)(2)(C) states that an enforceable policy must:

- be clear and concise regarding the requirements, the activities and the persons affected by it,
- use precise, prescriptive and enforceable language,
- not address matters authorized by state or federal law unless it is a “matter of local concern.”

A “matter of local concern” is defined as a specific *coastal use* or *resource* that is sensitive to development, not adequately addressed by state or federal law, and of unique concern to the coastal district as demonstrated by local usage or scientific evidence.

In addition, an enforceable policy may not address aspects of an activity regulated under Alaska Department of Environmental Conservation (DEC) statutes or regulations.

Regulations developed by the Alaska Department of Natural Resources (DNR) in 2004 set out additional criteria for coastal district policies. Most importantly, the regulations restrict district enforceable policies to “uses and activities” identified in specific statewide standards and eight types of designated areas (11 AAC 114.270). A district may establish a policy for five statewide standards without designating an area.

- ***Coastal Development:*** for uses and activities in or along coastal waters anywhere in the coastal area (11 AAC 114.200),¹
- ***Coastal Access:*** to increase public access to, from and along coastal waters (11 AAC 114.220),
- ***Energy Facilities:*** for major energy facilities in the coastal area (11 AAC 114.230),
- ***Utility Routes and Facilities:*** for routes and facilities occurring anywhere in the coastal area (11 AAC 114.240),
- ***Sand and Gravel Extraction:*** for sand and gravel operations in coastal waters, intertidal areas, barrier islands, and spits (11 AAC 114.260), and
- ***Transportation Routes and Facilities:*** for routes and facilities occurring anywhere in the coastal area (11 AAC 114.280).

District enforceable policies may address a use or activity identified in eight types of designated areas identified in 11 AAC 114.250(b) – (i). These policies may only address uses or activities occurring in the designated area, and the designated area may only be created within the district’s coastal zone (i.e., it may not include federal land or federal

¹ “Coastal waters” apply only to waters with a measurable amount of salt water. “Coastal area” includes all areas within a coastal district’s coastal zone, including federal land and adjacent federal waters in the Outer Continental Shelf. The term “coastal boundary” includes only non-federal land within the state’s coastal zone.

waters of the coastal area). Four of these types of designated areas are also addressed by a statewide standard:

- ***Energy Facilities Areas:*** (statewide Energy Facilities standard – 11 AAC 114.230),
- ***Important Habitat Areas:*** (statewide Habitats standard – 11 AAC 114.300),
- ***Natural Hazard Areas:*** (statewide Natural Hazards standard – 11 AAC 114.210), and
- ***Subsistence Use Areas:*** (statewide Subsistence standard – 11 AAC 114.270)

Four other types of designated areas identified in 11 AAC 114.250 have no corresponding statewide standard.

- ***Recreational Use Areas:*** for any area within the coastal zone receiving significant use or the potential for recreational use because of physical, biological or cultural features,
- ***Tourism Use Areas:*** for any area within the coastal zone receives or has the potential to receive visitors from cruise ships, floatplanes, helicopters, busses or other means of conveying groups,
- ***Areas Suitable for Commercial Fishing and Seafood Processing Facilities:*** for any area within the coastal zone, and
- ***Areas Suitable for the Study or Understanding of History and Prehistory:*** for any area within the coastal zone.

The “application” section that follows each policy identifies where the policy applies and to what subject use it relates. The rationale section that follows each policy explains why the policy is needed, and for matters regulated by state or federal agencies, it describes why the state or federal law does not adequately address local concerns.

4.4 Designated Areas

The revised ACMP regulations, adopted in 2004, require establishment of area designations before certain types of policies may be established. The AEB designates ___ kinds of areas under the authority of 11 AAC 114.250: Subsistence, Important Habitat, Natural Hazards, Areas Suitable for the Understanding of Historic and Prehistoric Resources, and Areas Suitable for Commercial Fishing and Seafood Processing Facilities. In addition to these general areas, specific areas identified in the original CMP have been designated for both subsistence and important habitat. These areas are discussed briefly in this section and in more detail in Chapter 7.

4.4.1 Subsistence Areas

The AEB has established all non-federal areas in the coastal zone as a subsistence area. Residents use all areas of the borough for subsistence hunting and fishing and plant collection. This designation is described in more detail in Chapter 7.

4.4.2 Important Habitat Areas

The AEB designates the following areas as important habitat areas under 11 AAC 114.250.

- Units within the AEB designated for habitat management in the 2005 Bristol Bay Area Plan because of concentrations of fish and wildlife or special habitat features, including units R18-02, R18T-01, R18T-02, R19-01, R19T-01, R21T-01, R21T-02, R21T-03, R21T-05, and R22T-01. These habitats have been identified by DNR to have extraordinary attributes, and many of them support large concentrations of fish, birds and land mammals. Appendix H includes a map of these units.
- Areas identified for the following resources on Most Environmentally Sensitive Area (MESA) maps 25a and 25b (Port Moller-Nelson Lagoon), 26a and 26 b (Izembek Lagoon), 28a and 28b (Unimak Pass-Krentizin Islands), 35 (Sandman Reefs), and 36 (Shumagin Islands): Harbor seal haulout concentrations, sea lion haulout, sea lion rookeries, walrus haulout concentrations, sea otter concentrations, seabird colonies, waterfowl spring and fall concentrations, waterfowl fall concentrations, waterfowl nesting concentrations, waterfall water concentrations, waterfowl molting concentrations, herring spawning concentrations, brown bear feeding concentrations, brown bear spring concentrations, and razor clam concentrations (Appendix F).
- Areas identified for the following sensitive resources in the Coastal Resources Inventory and Environmentally Sensitivity Maps 1 – 13: alcid and pelagic bird, diving bird, gull and tern, shorebird, waterfowl, nesting colonies, fish, invertebrate, bivalve, crab, plant, eelgrass, pinniped, sea otter, haulout site, and multi-group (Appendix G).
- All anadromous fish waters identified in the ADFG Fish Distribution Database Atlas (Appendix I).
- The areas identified as special use areas on Map 1 (Appendix E) including the Unimak Pass, Bechevin Bay, Izembek Lagoon, Pavlof/Canoe Bay, Nelson Lagoon, and Port Moller/Herendeen Bay special use areas.

Additional information about these designations is included in Chapter 7.

4.4.3 Natural Hazard Areas

The AEB designates separate natural hazard areas for the following hazards: Earthquake Hazard Areas, Volcanic Hazard Areas, Landslides and Avalanches, Flooding, Tsunami and Erosion Hazard Areas. These areas are described in detail in Chapter 7.

4.4.4 Areas Suitable for the Understanding of Historic and Prehistoric Resources

The AEB has designated all non-federal land within its coastal zone as important to the study and understanding of historic and prehistoric resources. Archaeological resources have the potential to be found anywhere in the borough. Attachment J provides a map of the AEB coastal zone, including lands owned by the federal government. Chapter 7 provides additional information about designated areas.

4.4.5 Areas Suitable for Commercial Fishing and Seafood Processing Facilities

This section begins with a description of areas designated as suitable for commercial fishing and seafood processing facilities followed by an update to the resource inventory and resource analysis. Chapter 7 provides more information on this designation.

4.5 Enforceable Policies

A. Coastal Habitats and Resources

Policy A-1: Fisheries Habitat

Protection of fisheries habitat will be given a high priority when evaluating projects that may impact fish spawning, migration, rearing, and over-wintering areas. Project will be allowed if they maintain banks, beaches, and beds critical to fish populations in a productive natural condition or modified in such a way that does not significantly diminish natural habitat functions.

Application: This policy applies to areas designated for important habitat or subsistence.

Rationale: This policy is necessary to address this local concern. Healthy fisheries are important for commercial, subsistence and recreational fisheries. State and federal law does not provide this level of specificity. State law is inadequate because it is too general and vague.

Policy A-2: Instream Flow

Except for public water supply and domestic use, the maintenance of fish stocks is the highest priority water use in the district. Water appropriations shall not be allowed if they are likely to cause the instream flow to fall below the amount necessary to protect fish and wildlife habitat.

Application: This policy applies to areas designated for important habitat or subsistence.

Rationale: This policy is necessary to address this local concern. Healthy fisheries are important for commercial, subsistence and recreational fisheries. State and federal law does not provide this level of specificity regarding appropriation of water.

Policy A-3: Water Withdrawal Criteria

Water intake pipes used to remove water from fish-bearing waters shall use a screened enclosure so as to prevent fish entrainment and impingement. Pipes and screening will be designed, constructed, and maintained so that the maximum water velocity at the surface of the screen enclosure is not greater than 0.1 foot per second. Screen mesh size will not exceed 0.04 inch. Other technology and techniques may be used if the applicant demonstrates, to the satisfaction of the district, that these techniques will prevent the entrainment and impingement of fish may also be utilized.

Application: This policy applies to areas designated for important habitat.

Rationale: This policy is necessary to address this local concern. Healthy fisheries are important for commercial, subsistence and recreational fisheries. State and federal law does not provide this level of specificity water intake pipes.

Policy A-4: Wetlands

Applicants proposing activities in wetlands that are of hydrological or ecological importance to fish habitat shall include alternative measures in the project description that demonstrate fish habitat will not be significantly diminished.

Application: This policy applies to areas designated for important habitat or subsistence.

Rationale: This policy is necessary to address this local concern. Healthy fisheries are important for commercial, subsistence and recreational fisheries. State and federal law does not provide this level of specificity regarding hydrology of wetlands important for fish habitat.

Policy A-5: Water Bird Habitat

Applicants shall include information in the project application packet that demonstrates that the project will not result in sedimentation, channelization, diversion, or damming that would alter the natural hydrological conditions and have a significant adverse impact on habitat important to significant populations of migratory or nesting shorebirds, seabirds, or waterfowl.

Application: This policy applies to areas designated for important habitat.

Rationale: This policy is necessary to address this local concern. Healthy water bird populations are necessary for subsistence and recreational use. State and federal law does not provide this level of specificity regarding water bird habitat.

Policy A-6: Natural Processes

Applicants proposing to conduct activities on previously undisturbed sites shall address the activity's potential impacts to coastal resources and uses in the consistency certification. For any such resources that are experiencing known effects from climate change, including rare or endangered plants and plant communities or indigenous animal species that are identified in the project or use area, the applicant shall include in the project description best management practices (BMPs) that minimize project impacts to the identified resources and help maintain vigorous populations of such species.

Application: This policy applies to areas designated for the important habitat or subsistence.

Rationale: State and federal laws are inadequate because they do not include the specificity of this policy.

B. Natural Hazards

Policy B-1: Bank Stabilization

All stream or lake bank cuts, fills or exposed earthwork adjacent to anadromous and high-value resident fish streams, wetlands or marine waters shall be stabilized, to the extent practicable with consideration of environmental factors, to prevent erosion or sedimentation into adjoining waters during construction, operation and following cessation of development activities.

Application: This policy applies to areas designated as important habitat areas, natural hazard areas and subsistence areas.

Rationale: Existing state and federal laws do not require the level of specificity included in this policy.

Policy B-2: Design and Siting Criteria

a) The applicant shall demonstrate in the project description that ground disturbing or construction activities in areas vulnerable to erosion, wasting, landslides, and other unstable ground conditions shall be conducted using technology and practices that will guarantee the ability of the activity or project to withstand naturally-generated forces and protect the viability of biological resources.

b) Development activities shall minimize removal of existing vegetative cover in erosion prone areas or areas subject to mass wasting. In cases where development necessitates

removal of vegetation, erosion shall be minimized through re-vegetation or by other appropriate erosion control measures.

c) The applicant shall identify appropriate measures in the project description that will minimize excessive run-off which might otherwise cause accelerated erosion, and retain natural drainage patterns, surface water quality and natural groundwater recharge areas.

Application: This policy applies to areas designated as important habitat areas, natural hazard areas, and subsistence areas.

Rationale: Existing state and federal laws do not require the level of specificity included in this policy.

C. Coastal Development

Policy C-1: Coastal Facilities

In planning for and approving major waterfront facilities, docks, piers, cargo handling and storage areas, commercial and subsistence fishing support facilities, marinas, and other facilities shall be sited, designed, constructed and operated to minimize the need for duplicative coastal facilities and to optimize the use of coastal land and water.

Application: This policy applies to waterfront areas throughout the coastal area, and it relates to part b) of the statewide Coastal Development standard.

Rationale: Existing state and federal law is not adequate because it is not as specific as this policy.

Policy C-2: Erosion

The applicant shall demonstrate in the project description that upland habitats will be managed to minimize excessive runoff which will cause accelerated erosion and to retain natural drainage patterns, surface water quality, and natural groundwater recharge areas. Development activities shall minimize removal of existing vegetative cover in erosion-prone areas or areas subject to mass wasting. In cases where development necessitates removal of vegetation, erosion shall be minimized through re-vegetation using native plant species or by other appropriate erosion control measures that emulate natural conditions.

Application: This policy applies to areas designated as natural hazard areas for erosion.

Rationale: Existing state and federal law is not adequate because it is not as specific as the policy. In addition, the definition of “practicable” under the statewide standards is limited to economic factors.

Policy C-3: Setback from Fish Streams

Projects adjacent to fish habitat will be allowed if they maintain a setback of at least 100 feet landward of the ordinary high water mark. A project proposed to be located within this setback will not be allowed unless the applicant demonstrates in the project description that the setback is not practicable with consideration of effects to habitat and subsistence use. This setback requirement does not apply to projects that require an over-water or water edge location, nor does it preclude necessary stream, river, or lake crossings.

Application: This policy applies to fish streams in areas designated for subsistence use or important habitat.

Rationale: This policy addresses local concerns not adequately addressed by state or federal law, because there are no required setbacks from these laws. Subsection 11 AAC 112.300(b) of the statewide Habitats standard is vague and does not address this level of specificity. This policy is necessary to protect fish habitat and associated uses including subsistence and recreational fishing.

Policy C-4: Dredging and Filling in Waters

Projects that require dredging or filling in streams, rivers, lakes, wetlands, or saltwater areas including tideflats, are not allowed unless the applicant demonstrates in the project description that the project will be located, designed, constructed, and maintained in a manner so as to:

- a) not significantly impact critical fish and wildlife habitat,
- b) not significantly interfere with critical life history phases of wildlife and fish including migration, spawning, calving, and rearing,
- c) limit areas of direct disturbance to as small an area as practicable,
- d) minimize the amount of waterborne sediment traveling away from the dredge or fill site, and
- e) maintain circulation and drainage patterns in the area of the fill.

Application: This policy applies throughout the coastal area in areas designated for important habitat. Also, it applies to areas covered by the statewide Coastal Development standard. As required by state regulations, this policy applies to uses and activities identified in 11 AAC 114.270(a)(1).

Rationale: This policy addresses local concerns not adequately addressed by state or federal law. The statewide mitigation sequencing process does not apply to the subject uses associated with this policy and neither the statewide standards nor other state or federal laws provide this level of specificity.

Policy C-5: Disposal of Dredged Materials

Other than temporary storage of sand and gravel resources, dredged materials disposed of onshore in riparian areas will be contained and stabilized to prevent significant damage to habitat.

Application: This policy applies throughout the coastal area in areas designated for subsistence use or important habitat. As required by state regulations, this policy applies to uses and activities identified in 11 AAC 114.270(a)(1).

Rationale: This policy addresses local concerns not adequately addressed by state or federal law. State and federal laws do not provide this level of specificity. The policy is necessary to protect recreation and subsistence uses and fish resources.

Policy C-6: Overburden Disposal

Overburden removed to facilitate development projects and activities shall be disposed of in upland areas. Disposal of overburden in lakes, within the mean annual floodplain of streams or rivers, or below the limit of mean high water in intertidal areas and estuaries shall be avoided. Wherever practicable, with consideration of habitat effects, overburden shall be saved and replaced on the cleared area as part of the reclamation procedure.

Application: This policy applies throughout the coastal area in areas designated for important habitat. As required by state regulations, this policy applies to uses and activities identified in 11 AAC 114.270(a)(1).

Rationale: This policy addresses local concerns not adequately addressed by state or federal law. State and federal laws do not provide this level of specificity. This policy is necessary to protect subsistence uses and biological productivity, including fish resources.

Policy C-7: Structures Over Waters

Structures in or over streams, lakes, rivers, wetlands, or saltwater including tideflats, will be located, designed, constructed and maintained so as to not:

- a) significantly affect fish habitat,
- b) obstruct fish and wildlife migration, spawning, and rearing, and
- c) obstruct navigation and fish harvesting activities.

Application: This policy applies throughout the coastal area in areas designated for important habitat. As required by state regulations, this policy applies to uses and activities identified in 11 AAC 114.270(a)(1).

Rationale: This policy addresses local concerns not adequately addressed by state or federal law. State and federal laws do not provide this level of specificity. The policy is necessary to protect recreation and subsistence uses and fish resources.

Policy C-8: Floating Facilities

Floating facilities are not allowed unless they are sited, designed, constructed, operated, and maintained to:

- a) reduce conflicts with other uses of offshore areas, tidelands, rivers, shorelines and adjacent upland uses,
- b) not ground on tidelands, including times of extreme low tides,
- c) use anchoring methods which are appropriate for the location and sufficient to anchor the facility during high winds, extreme tides, and high water flows, and
- d) be promptly removed, including all structures, anchors, and other facility components, when the approved use has been discontinued.

Application: This policy applies in important habitat areas.

Rationale: This policy addresses local concerns not adequately addressed by state or federal law. State and federal laws do not provide this level of specificity. The policy is necessary to protect land and water uses of the coastal area in the AEB and to reduce likely conflicts among competing uses of the area.

D. Fish and Seafood Processing

Policy D-1: Fisheries Enhancement Projects

Fisheries enhancement projects shall maintain the genetic integrity of wild and indigenous species by using local, indigenous stocks.

Application: This policy applies to areas designated for commercial fishing.

Rationale: This policy is necessary to ensure continuance of healthy fisheries. State and federal law does not provide this level of specificity regarding use of local, indigenous stocks.

Policy D-2: Seafood Processing Wastes

Land-based and floating fish processors shall minimize the impacts of discharges of seafood processing wastes to the marine environment by:

- a) siting facilities in areas where the waters have adequate circulation or biological assimilation capacity to accept these discharges without causing a significant adverse impact to biological productivity in the receiving waters, and

- b) maximizing the recovery and efficient utilization of processing waste through production of fish meal or fish oil, when practicable.

Application: This policy applies to areas designated for commercial fishing facilities and important habitat.

Rationale: This policy is necessary to address this local concern. Healthy fisheries are important for commercial, subsistence and recreational fisheries. State and federal law does not provide this level of specificity regarding disposal of seafood processing wastes.

E. Sand and Gravel

Policy E-1: Sand and Gravel Extraction

Sand and gravel extraction from offshore areas, inter-tidal areas, estuaries, barrier islands, spits, beaches, riverbeds, lakes, wetlands, and floodplains, will be permitted only where:

- a) there will be no significant adverse impact on fish, fish habitat, or fish harvest;
- b) the material is needed for a significant public need as defined by the AEB; and
- c) no practicable upland site exists with the consideration of environmental and social effects.

Application: This policy relates to the statewide sand and gravel extraction policy (11 AAC 112.260). It applies throughout the coastal area to the areas covered by this subject use.

Rationale: This policy is necessary to address matters of local concern not adequately addressed by state or federal law. The statewide standard does not address this level of specificity, including factors such as adverse impacts to fish and fish habitat, public need and environmental and social effects.

Policy E-2: Sand and Gravel Extraction in Fish Habitat

Sand and gravel extraction is not allowed in or adjacent to fish habitat unless the applicant demonstrates in the project description that there will be adequate measures implemented to prevent adverse impacts to fish and fish habitat. The project description shall include reclamation or rehabilitation measures that will minimize stream bank erosion and the sedimentation of fish habitat. Sand gravel extraction shall be consolidated.

Application: This policy relates to the important habitat areas.

Rationale: This policy is necessary to address matters of local concern not adequately addressed by state or federal law. The statewide standard and other state and federal laws do not address this level of specificity.

Policy E-3: Mining Operations Near Fish Habitat

Mining projects for locatable minerals in or adjacent to fish habitat will be disallowed unless the applicant demonstrates in the project description that measures will be implemented to eliminate significant adverse impacts.

Application: This policy relates to areas designated for important habitat or subsistence.

Rationale: This policy is necessary to address matters of local concern not adequately addressed by state or federal law. State and federal laws do not address this level of specificity.

Policy E-4: Offshore Mining

a) Mining for locatable minerals in offshore areas shall not be allowed unless the applicant demonstrates in the project description that:

- i) commercial fishing activities will not be obstructed;
- ii) navigation will not be significantly obstructing navigation; and
- iii) adverse impacts to important fish and wildlife habitat and the populations using such habitat will not occur.

b) Dredge spoils will be re-deposited in areas disturbed by dredging unless the applicant demonstrates in the project description that there will be a substantial public benefit, as determined by the district, would be derived from an alternative disposal method. Mining and mineral processing operations must be compatible with the use of adjacent uplands will to the extent practicable with consideration of social and environmental factors.

Application: This policy applies to areas designated for important habitat and for areas designated as suitable for commercial fishing facilities.

Rationale: This policy is necessary to address matters of local concern not adequately addressed by state or federal law. State and federal laws do not address this level of specificity.

F. Energy Facilities

Policy F-1: Land-Based Seismic Surveys

Seismic surveys shall be disallowed unless the applicant demonstrates in the project description that seismic surveys occurring on land will be located, designed and conducted in a manner that prevents significant disturbances to fish and wildlife populations, habitats, and subsistence and recreational harvest of fish and wildlife.

Application: This policy applies to areas designated for subsistence or important habitat.

Rationale: This policy is necessary because state and federal law about seismic surveys do not address this level of specificity.

Policy F-2: Water-Based Seismic Surveys

Seismic surveys in fresh and marine waters shall not be allowed unless the applicant demonstrates in the project description that there are adequate measures to prevent effects to coastal uses and resources by using energy sources such as airguns and gas exploders or other techniques, other than blasting, that do not significantly effect fish and wildlife. Seismic surveys are disallowed in areas open for commercial fishing and during spring migration of salmon smolts.

Application: This policy applies throughout the coastal area, and it applies to the statewide energy facilities standard. It also applies to areas designated for recreation, subsistence and important habitat.

Rationale: This policy is necessary because state and federal law about seismic surveys do not address this level of specificity or protection for coastal resources and uses. Noise from seismic surveys has been shown to affect fish and wildlife. Timing of surveys and use of survey techniques can minimize impacts to coastal uses and resources, including juvenile salmon and commercial and subsistence fishing.

Policy F-3: Oil and Gas Leasing

Oil and gas leasing is disallowed in marine waters unless the lease area is accessed from onshore areas using directional drilling.

Application: This policy applies to areas designated as appropriate for commercial fishing facilities.

Rationale: This policy is necessary to protect the area fisheries and to protect local economies of the AEB. Existing state and federal law does not adequately address this issue of local concern because it does not include this level of specificity.

Policy F-4: Oil and Gas Exploration and Development

Oil and gas exploration or development activities are not allowed in important habitat areas unless the applicant demonstrates in the project description that the project will not significantly affect habitat supporting important life stages of fish and wildlife or commercial fishing activities.

Application: This policy applies to areas designated as suitable for commercial fishing facilities and important habitat areas.

Rationale: This policy is necessary to protect the area fisheries and to protect local economies of the AEB. Existing state and federal law does not adequately address this issue of local concern because it does not include this level of specificity.

Policy F-4: Use of Existing Facilities

The applicant shall demonstrate in the project description that to the extent practicable, with consideration of habitat effects, that new energy exploration and development shall use existing facilities, including support facilities, transmission corridors and pipeline systems.

Application: This policy applies to areas designated for important.

Rationale: Existing state and federal law is not adequate because it is not as specific as the policy. In addition, the definition of “practicable” under the statewide standards is limited to economic factors.

Policy F-5: Location of Energy Facilities

- a) Energy facilities will be disallowed in areas where the applicant has not demonstrated, in the project description, that the project will not result in significant adverse impacts to fish and wildlife populations, commercial fishing and subsistence activities.
- b) Facilities that could result in significant adverse effects to habitat, including oil storage facilities (with a capacity greater than 660 gallons), muds and cuttings, and sewage ponds, shall have buffer zones of not less than 100 feet and up to 1,500 feet from freshwater supplies, streams, lakes, and wetlands that are important to fish and water birds.

Application: This policy applies to areas designated for subsistence use.

Rationale: This policy is necessary to address matters of local concern not adequately addressed by state or federal law. The DNR indicated to the legislature in 2003 that districts may establish policies for the siting of facilities that are regulated by the DEC.

Policy F-6: Dismantlement, Restoration and Rehabilitation

Applicants shall include a plan for the dismantlement, restoration and rehabilitation of oil and gas facilities with the consistency certification. This plan shall include measures to return the area to pre-project conditions to the extent practicable with consideration of social and environmental factors.

Application: This policy applies to areas designated for subsistence or for important habitat.

Rationale: As demonstrated in the 2002 report by the General Accounting Office on North Slope oil and gas activities, state and federal law is inadequate regarding DRR requirements.

Policy F-7: Commercial Fishing Conflicts

The applicant shall demonstrate in the project description that offshore pipelines or other subsea structures will be designed and constructed so as to not interfere with commercial fishing operations.

Application: This policy applies to areas designated as suitable for commercial fishing facilities.

Rationale: This policy is necessary to address matters of local concern not adequately addressed by state or federal law. There are no state or federal laws that address potential snagging of fishing gear on pipelines and other oil and gas facilities.

Policy F-8: Hydroelectric Projects

Hydroelectric projects shall not dam, divert, or draw down rivers, streams, or lakes that support important commercial, subsistence, or recreational fish species unless the applicant demonstrates in the project description that the project will not significantly affect fish production.

Application: This policy applies to areas designated for subsistence or important habitat.

Rationale: This policy is necessary because state and federal laws do not address this level of specificity.

Policy F-9: Wind Generation

The applicant shall demonstrate in the project description that wind generation projects will be sited, designed, constructed, and operated to prevent significant mortality to birds. Such sites shall be located outside of important migratory bird routes.

Application: This policy is established pursuant to the statewide Energy Facilities standard and applies throughout the coastal area.

Rationale: This policy is necessary because state and federal laws do not address this level of specificity. 11 AAC 112.230(12) addresses unhindered movement of wildlife; however it does not specifically address bird strikes and mortality. 11

AAC 113.250 specifically allows a district to establish policies related to the statewide energy facilities standard without designating the area as suitable for energy facilities.

G. Transportation and Utilities

Policy G-1: Transmission Lines

Transmission lines will be allowed only if the applicant demonstrates, in the project description, the lines will be located, designed, constructed, and maintained in a manner so as to not result in significant adverse impacts to fish and wildlife populations and habitat. Existing transportation corridors will be used for transmission lines to the extent practicable with consideration of social and environmental factors. Where existing corridors cannot be used, the construction of new lines will avoid creating permanent access corridors and shall minimize damage to the land surface.

Application: This policy is established pursuant to the statewide Utility Routes and Facilities standard and applies throughout the coastal area (11 AAC 112.240).

Rationale: This policy is necessary because state and federal laws do not address this level of specificity. The statewide standard does not require consolidation of corridors.

Policy G-2: Access

Projects that restrict traditional methods and means of public access on public land shall not be allowed unless the applicant demonstrates that subsistence access will not be significantly diminished or that suitable alternative access is provided. Traditional means of access include roads, waterways, trails, campsites, and aircraft landing areas. Traditional means of access include but are not limited to aircraft, off-road vehicles, boat, snow machine, dogsled, and foot.

Application: This policy applies to areas designated for subsistence use.

Rationale: This policy is necessary because neither state nor federal law includes these kinds of access provisions.

Policy G-3: Location of New Roads

To the extent practicable, new roads will be located, designed, constructed, and maintained to prevent the loss of important fish and wildlife habitat and significant loss or displacement of fish and wildlife populations. River, stream, and lake crossings will be minimized, and measures to maintain bank stability and erosion must be incorporated into project descriptions.

Application: This policy is established pursuant to the statewide transportation standard (11 AAC 112.280) and areas designated for important habitat.

Rationale: State and federal laws do not address this level of specificity. Impacts to fish and wildlife habitat and populations affect recreational and subsistence use of those resources.

Policy G-4: Off-Road Access

Applicants using temporary off-road access shall demonstrate in the project description that the project will implement measures to prevent surface disturbance and destruction of tundra vegetation, fragile soils, permafrost, and wetlands. Operations occurring in caribou calving areas that involve repeated off-road vehicle use shall be timed to occur outside of the calving period, and operations in moose over-wintering areas shall not occur during sensitive periods when significant populations of moose are present.

Application: This policy applies to areas covered by the statewide transportation standard (11 AAC 112.280) and areas designated for important habitat.

Rationale: State and federal laws do not address this level of specificity. Impacts to fish and wildlife habitat and populations affect recreational and subsistence use of those resources.

Policy G-5: New Airstrips

New airstrips will be allowed only if they are located, designed, constructed, and operated in a manner so as to prevent significant physical, visual, and acoustical disturbances to fish and wildlife populations and habitats.

Application: This policy is established pursuant to the statewide transportation standard (11 AAC 112.280).

Rationale: State and federal laws do not address this level of specificity. Impacts to fish and wildlife habitat and populations affect recreational and subsistence use of those resources.

Policy G-6: Critical Moose and Caribou Habitat

Utility lines that cross critical caribou or moose habitat shall be buried wherever soil and geophysical conditions permit. Utility lines in these areas that cannot be buried due to soil or geophysical conditions shall be designed and constructed in a manner that has been demonstrated to provide free movement and safe passage for caribou and moose.

Application: This policy is established pursuant to the statewide Utilities and Facilities standard, and it applies throughout the coastal area.

Rationale: This policy is necessary to address matters of local concern not adequately addressed by state or federal law. There are no state or federal laws that include this level of specificity regarding burial of utility lines.

H. Subsistence

Policy H-1: Subsistence Use Priority

Subsistence use will be given the highest priority use for areas designated for subsistence use. Before a potentially conflicting activity may be authorized, the applicant must demonstrate that:

- 1) the analysis required by 11 AAC 112.270 adequately assesses potential impacts of the project on subsistence uses,
- 2) appropriate safeguards are in place to ensure the subsistence use priority is met, and
- 3) subsistence resources are not depleted below the level needed to sustain sufficient harvest for district residents as demonstrated by subsistence use studies.

Application: This policy applies throughout the coastal area in areas designated for subsistence.

Rationale: This policy is necessary to address matters of local concern not adequately addressed by state or federal law. State or federal laws do not include this level of specificity regarding subsistence.

Policy H-2: Subsistence Access

Applicants shall accommodate access to coastal resources used for subsistence unless reasonable alternative access is provided that is acceptable to the district.

Application: This policy applies throughout the coastal area in areas designated for subsistence.

Rationale: This policy is necessary to address matters of local concern not adequately addressed by state or federal law. State or federal laws do not include this level of specificity regarding subsistence.

Policy H-3: Social and Cultural Impact Assessments

An applicant proposing a large project shall submit with the consistency certification an assessment of expected social and cultural impacts that includes:

- 1) The number of workers expected to become temporary or permanent residents of the district as a result of the project,
- 2) The expected impacts to social and cultural resources, including subsistence

- resources, and
- 3) Any infrastructure or service improvements required for the expanded population.

Policy H-4: Marine Mammal Habitats

Projects that may have reasonably significant impacts to important pinniped haul outs and rookeries shall not alter or physically disturb such sites in a manner that would preclude or interfere with continued use of those sites. Projects likely to have high levels of acoustical or visual disturbance located in important habitat shall not be approved unless the applicant demonstrates that there will be no significant long-term effects. Projects will not be allowed in the following important habitat areas used by marine mammals during the following periods:

- (1) one half mile of sea lion haul outs from May 1 through July 31;
- (2) one-half mile of walrus haul outs from April 1 through November 30;
- (3) one-half mile of harbor seal haul outs between March 1 and September 30.

Application: This policy applies to areas designated as important habitat areas.

Rationale: This policy is necessary to address this local concern. Existing state and federal laws do not require the level of specificity included in this policy.

H-5: Caribou Wintering and Calving Grounds

Projects that have reasonably foreseeable significant impacts to caribou wintering or calving grounds shall not be located in caribou wintering or calving areas unless the applicant demonstrates in the project description that measures will be implemented to prevent significant impacts.

Application: This policy applies to areas designated as important habitat areas and subsistence use areas.

Rationale: This policy is necessary to address this local concern. Existing state and federal laws do not require the level of specificity included in this policy.

I. Recreation and Tourism

Policy I-1: Commercial Recreation

Commercial recreational use, will be located, designed, and conducted to avoid or minimize loss or displacement of existing fish and wildlife populations, interference with subsistence or recreational harvest, and adverse impacts on the physical, biological and cultural features of the area.

Application: These policies apply throughout the coastal zone in areas designated as subsistence areas.

Rationale: These policies are necessary to address local concerns not adequately addressed in state and federal law. Existing law does not adequately address conflicts between subsistence and other uses including commercial recreation.

J. Historical, Prehistorical and Archeological Resources

Policy J-1: Cultural, Historic and Archeological Sites

Applicants proposing to conduct activities that could disturb historic or prehistoric resources or traditional activities such as fish camps, culture camps, or Native allotments, shall submit an evaluation with the consistency certification that:

- a) evaluates the potential for encountering historic and archaeological resources,
- b) evaluates potential for conflicting with cultural activities,
- c) indicates that the applicant has consulted with the State Historic Preservation Office (SHPO) regarding the potential for finding archaeological sites in the project area, and
- d) that outlines a plan for protecting previously undiscovered archeological resources that may be found on the site, including a provision to report the discovery of such resources to the AEB and to the SHPO.

Application: This policy applies to areas designated for the study or understanding of history or prehistory.

Rationale: This policy applies to areas designated for the study or understanding of historic and prehistoric resources. State and federal laws are inadequate because they do not include the specificity of this policy.

Policy J-2: Cultural Resource Protection

Projects that may disturb known artifacts of significant historic, prehistoric or archeological importance shall not be allowed, unless the SHPO, in consultation with the landowner, approves the action. If previously undiscovered artifacts or areas of historic, prehistoric or archaeological importance are encountered during development, the applicant shall notify the landowner, SHPO and the AEB, and the site shall be protected from further disturbance pending a timely evaluation by the SHPO.

Application: This policy applies to areas designated for the study and understanding of history or prehistory.

Rationale: State and federal laws are inadequate because they do not include the specificity of this policy.

K. Important Habitat Areas Previously Established as Special Use Areas

These policies apply to areas formerly designated by the AEB as special use areas.

K-1 Port Moller/Herendeen Bay/Bear River Important Habitat Area

a) Development activities in marine and estuarine waters that may interfere with commercial fishing activities or facilities, including fishing boats and gear, shall not be conducted during openings for commercial fishing. Specific dates for openings and closings of commercial fishing periods are regulated by the Alaska Department of Fish and Game (ADFG) but generally fall within the following periods:

- i. salmon – Outer Coast (May 25 – September 30, peak June 15 – August 31)
- ii. salmon – Port Moller and Herendeen Bay (July 1 - July 31)
- iii. herring – Port Moller and Herndeem Bay (April 15 – June 15, peak May 1 - 31)
- iv. capelin – Port Moller and Herndeem Bay (May 15 – June 15)

b) Project activities that produce excessive noise, including seismic surveys, shall not be conducted in areas of exposed tideflats during periods of concentrated use by waterfowl and shorebirds from April 1 through June 15 and from September 1 through October 31.

c) Tideflats, estuarine waters, and marine waters shall not be used as a disposal site for dredged materials, processed materials from mining activities, or oil contaminated drilling muds or drilling muds with additives likely to be harmful to fish and wildlife except where dredge materials are used in an authorized structure or facility.

d) Marine Mammals: Activities shall avoid significant adverse impacts to marine mammals, their use of marine waters and haul-out areas, and to subsistence harvest of marine mammals.

e) Water Birds: To minimize disturbance to sensitive waterfowl and shorebirds, aircraft shall maintain a flight level above marine and estuarine waters and tideflats of 1,500 feet for fixed-wing aircraft and 3,000 feet for helicopters from April 1 through June 15 and from September 1 through October 31. This policy does not apply when other distances are necessary due to weather or safety concerns.

f) Dredging or disposal of dredge spoil shall not occur within or adjacent to herring spawning habitat as indicated on the Environmental Sensitivity Index maps and on Map D of the original resource inventory.

Application: This area is designated as important habitat under 11 AAC 114.250.

Rationale: State and federal laws are inadequate because they do not include the specificity of this policy.

K-2 Nelson Lagoon Important Habitat Area

a) Development activities in marine and estuarine waters which could significantly interfere with subsistence or commercial fishing activities shall not be conducted during commercial fishing openings. Specific dates for openings and closings of commercial fishing periods are regulated by the ADFG but generally fall within the following period:

- i. salmon: subsistence and commercial fishing harvest (May 25 – September 30, peak June 1 – September 30)

b) Project activities that produce excessive noise, including seismic surveys, shall not be conducted in areas of exposed tideflats during periods of concentrated use by waterfowl and shorebirds from April 1 through June 15 and from September 1 through October 31.

c) Tideflats, estuarine waters, and marine waters shall not be used as a disposal site for dredged materials, processed materials from mining activities, or oil contaminated drilling muds or drilling muds with additives likely to be harmful to fish and wildlife except where dredge materials are used in an authorized structure or facility.

d) Marine Mammals: Activities shall avoid significant adverse impacts to marine mammals and their use of marine water and to subsistence harvest of marine mammals. Haul-out areas, as identified on the Environmental Sensitivity Index maps, shall not be physically altered or disturbed by development activities.

e) Water birds: To minimize disturbance to sensitive waterfowl and shorebirds, aircraft shall maintain a flight level above marine and estuarine waters and tideflats of 1,500 feet for fixed-wing aircraft and 3,000 feet for helicopters from April 1 through June 15 and from September 1 through October 31. This policy does not apply when other distances are necessary due to weather or safety concerns.

f) Coastal Processes: Development activities shall not alter the integrity or function of the barrier island and lagoon system nor adversely impact natural coastal processes.

g) Sand and Gravel Extraction: Removal of sand and gravel from barrier islands, isolated islands, peninsulas or sand spits shall have no significant adverse impact on the barrier islands and lagoon ecosystem, including the use of the area by fish, water birds and marine mammals.

h) Gray Whales: Development activities shall not cause significant adverse impacts to the seasonal access and use of Nelson Lagoon by gray whales.

Application: This area is designated as important habitat under 11 AAC 114.250.

Rationale: State and federal laws are inadequate because they do not include the specificity of this policy.

K-3 Izembek Lagoon Important Habitat and Subsistence Area

a) Development activities in marine and estuarine waters which could significantly interfere with subsistence or commercial fishing activities or facilities, including fishing vessels and gear, shall not be conducted during subsistence or commercial fishing. Specific dates for openings and closings of commercial fishing periods are regulated by the ADFG but generally fall within the following period:

- i. salmon: subsistence and commercial fishing harvest (June 25 – August 15, peak July 1 – August 10)

b) Project activities that produce excessive noise, including seismic surveys, shall not be conducted in areas of exposed tideflats during periods of concentrated use by waterfowl and shorebirds from March 15 – November 15.

c) Tideflats, estuarine waters, and marine waters shall not be used as a disposal site for dredged materials, processed materials from mining activities, or oil contaminated drilling muds or drilling muds with additives likely to be harmful to fish and wildlife except where dredge materials are used in an authorized structure or facility.

d) Marine Mammals: Activities shall avoid significant adverse impacts to marine mammals and their use of marine water and to subsistence harvest of marine mammals. Haul-out areas for harbor seals on barrier islands, isolated islands and sandbars as identified on Map F of the original resource inventory shall not be physically altered or disturbed by development activities.

e) Water birds: To minimize disturbance to sensitive waterfowl and shorebirds, aircraft shall avoid overflights of the waters and tideflats of Izembek and Moffett lagoons during Visual Flight Rules conditions by flying around the lagoons at a minimum flight level of 2,000 feet above sea level (ASL) over wetlands (March 31 – May 31 and August 15 – November 15). When weather conditions do not permit flying around the lagoons at or above 2,000 feet ASL and it is necessary to cross Izembek lagoon, helicopters and fixed wing aircraft shall only cross the lagoon along the Cold Bay Instrument Flight Rules (IFR) corridor. IFR aircraft flying outbound from Cold Bay shall cross Izembek Lagoon at or above 6,000 feet ASL. These conditions do not apply where safety, weather conditions, or aircraft performance limitations require other flight patterns.

f) Coastal Processes: Development activities shall not alter the integrity or function of the barrier island and lagoon system nor adversely impact natural coastal processes, including longshore transport and deposition.

g) Sand and Gravel Extraction: Removal of sand and gravel from barrier islands, isolated islands, peninsulas or sand spits shall have no significant adverse impact on the barrier islands and lagoon ecosystem, including the use of the area by fish, water birds and marine mammals.

h) Eelgrass Beds: Development activities shall not cause significant adverse impacts to eelgrass beds or interfere with the exchange of nutrients between estuarine lagoons and the marine environment.

Application: This area is designated as important habitat under 11 AAC 114.250.

Rationale: State and federal laws are inadequate because they do not include the specificity of this policy.

K-4 Bechevin Bay Important Habitat Area

a) Development activities in marine and estuarine waters which may significantly interfere with commercial fishing activities or facilities, including fishing boats and gear, shall not be conducted during commercial fishing openings. Specific dates for openings and closings of commercial fishing periods are regulated by the ADFG but generally fall within the following period:

- i. Salmon: subsistence and commercial fishing harvest (June 25 – August 10, September 1 – September 15, peak July 1 – July 31)

b) Project activities that produce excessive noise, including seismic surveys, shall not be conducted in areas of exposed tideflats during periods of concentrated use by waterfowl and shorebirds from March 15 – June 15 and August 15- November 15.

c) Tideflats, estuarine waters, and marine waters shall not be used as a disposal site for dredged materials, processed materials from mining activities, or oil contaminated drilling muds or drilling muds with additives likely to be harmful to fish and wildlife except where dredge materials are used in an authorized structure or facility.

d) Marine Mammals: Activities shall avoid significant adverse impacts to marine mammals and their use of marine water and to subsistence harvest of marine mammals. Haul-out areas for harbor seals on barrier islands, isolated islands and sandbars as identified on Map F in the original resource inventory shall not be physically altered or disturbed by development activities.

e) Water birds: To minimize disturbance to sensitive waterfowl and shorebirds, helicopters and fixed-wing aircraft shall maintain a minimum flight level of 2,000 feet above marine and estuarine waters of Big Lagoon, Hook Bay, and St. Catherine's Cove (March 31 – May 15). Helicopters and fixed-wing aircraft shall avoid overflights of the marine and estuarine waters of Swanson Lagoon, Big Lagoon, Hook Bay, and St Catherine's Cove and shall maintain a minimum flight level of 2,000 feet above wetlands within the designated area. These conditions should not apply where safety, weather conditions, or aircraft performance limitations require other flight patterns.

f) Coastal Processes: Development activities shall not alter the integrity or function of the barrier island and lagoon system nor adversely impact natural coastal processes, including longshore transport and deposition.

g) Sand and Gravel Extraction: Removal of sand and gravel from barrier islands, isolated islands, peninsulas or sand spits shall have no significant adverse impact on the barrier islands and lagoon ecosystem, including the use of the area by fish, water birds and marine mammals.

h) Eelgrass Beds: Development activities and uses shall not cause significant adverse impacts to eelgrass beds or interfere with the exchange of nutrients between estuarine lagoons and the marine environment.

Application: This area is designated as important habitat under 11 AAC 114.250.

Rationale: State and federal laws are inadequate because they do not include the specificity of this policy.

K-5 Unimak Pass Important Habitat Area

a) Development activities in marine and estuarine waters which may significantly interfere with commercial fishing activities and facilities, including fishing boats and gear, shall not be conducted during subsistence or commercial fishing openings. Specific dates for openings and closings of commercial fishing periods are regulated by the ADFG but generally fall within the following period:

- i. salmon: subsistence and commercial fishing harvest (June 1 – July 15)

b) Tideflats, estuarine waters, and marine waters shall not be used as a disposal site for dredged materials, processed materials from mining activities, or oil-contaminated drilling muds or drilling muds with additives likely to be harmful to fish and wildlife except where dredged materials are used in an authorized structure or facility.

c) Marine Mammals: Activities shall avoid significant adverse impacts to marine mammals and their use of marine water and to subsistence harvest of marine mammals. Haul-out areas for marine mammals as identified on Map F of the original resource inventory shall not be physically altered or disturbed by development activities.

Aircraft overflights of sea lion haul-out and rookery sites as identified on Map F of the original resource inventory shall maintain a flight level of 1,500 feet or one-quarter mile horizontal distance from such haul-out sites and rookeries (January 1 – December 31). From May 1 through July 31 during the pupping season, aircraft shall maintain a flight level of 3,000 feet or one-half mile horizontal distance from identified rookery sites. These conditions shall not apply where safety, weather conditions, or aircraft performance limitations require other flight patterns.

Application: This area is designated as important habitat under 11 AAC 114.250.

Rationale: State and federal laws are inadequate because they do not include the specificity of this policy.

K-6 Pavlof Bay/Canoe Bay Special Habitat Area

a) Development activities in marine and estuarine waters which may significantly interfere with subsistence or commercial fishing activities or facilities, including fishing boats and gear, shall not be conducted during subsistence or commercial fishing, unless approved by the AEB. Specific dates for openings and closings of commercial fishing periods are regulated by the ADFG but generally fall within the following period:

- i. salmon: subsistence and commercial fishing harvest (June 1 – August 31, peak July 20 – August 15).
- ii. Herring: subsistence and commercial fishing harvest (April 5 - June 15, peak May 1 – June 10).
- iii. Shellfish: Tanner crab (January 15 – February 28)
Dungeness crab (June 1 – November 30, peak August 1 – 31)
King crab (Traditionally, the month of September)

b) Project activities that produce excessive noise, including seismic surveys, shall not be conducted in areas of exposed tideflats during periods of concentrated use by waterfowl and shorebirds from April 1 through June 15 and from September 1 through October 31.

c) Tideflats, estuarine waters, and marine waters shall not be used as a disposal site for dredged materials, processed materials from mining activities, or oil contaminated drilling muds or drilling muds with additives likely to be harmful to fish and wildlife except where dredge materials are used in an authorized structure or facility.

d) Dredging or disposal of dredge spoil shall not occur within or adjacent to herring spawning habitat in the Special Area, as shown on Map D of the original resource inventory.

Application: This area is designated as important habitat under 11 AAC 114.250.

Rationale: State and federal laws are inadequate because they do not include the specificity of this policy.

4.6 Definitions

The definitions in this section apply throughout the AEB CMP, unless an alternative definition is mentioned. Any word or term not defined below or otherwise defined herein shall be used as it is defined in ACMP statutes or regulations or if not, with the meaning of common or standard usage. The following definitions shall apply:

- 1) "accessory," applied to a use or structure, means customarily subordinate to or incidental to, and located on the same parcel with a principal use or structure.
- 2) "applicant" means the person who submits an application for a consistency review, and that person's successors in title or interest.
- 3) "Assembly" means the Aleutians East Borough Assembly.
- 4) "avoid" means to prevent from occurring.
- 5) "beaches" means the area affected by wave action directly from the sea.
- 6) "borough" or "AEB" means the Aleutians East Borough of the State of Alaska.
- 7) "business day" means any calendar day, Monday through Friday, exclusive of borough holidays.
- 8) "coastal area" means the area within the AEB coastal boundary.
- 9) "Coastal Coordinator" means the AEB staff person assigned to oversee the day-to-day implementation of the coastal management program.
- 10) "commercial use" means use involving the storing, wholesaling, retailing, manufacturing or rental of any article, service or substance for cash, trade or any form of compensation, and supporting activities, but excludes such uses when they are conducted in a dwelling unit or accessory building to a dwelling unit and such uses are clearly subordinate to the primary use of the dwelling for residential purposes.
- 11) "commercial recreational use" means use involving the commercial provision of services including overland, air, or water travel, in support of any of the following: hiking, fishing, hunting, sightseeing, or similar activities. The term includes the activities of guides, transporters, outfitters and commercial air charters for recreational purposes.
- 12) "consistency determination" means the formal determination by the coordinating agency of whether a proposed use is consistent with the standards of the Alaska Coastal Management Program including the applicable policies of the AEB CMP.
- 13) "consistency recommendation" means the formal comment by the AEB as to whether a proposed use is consistent with the standards of the Alaska Coastal Management Program including the applicable policies of AEB CMP, which is submitted by the AEB to the coordinating agency, when a state agency is the coordinating agency.

- 14) "coordinating agency" is the party responsible for making or concurring in a consistency determination. When a proposed use is a federal action or requires an applicable federal or state permit, a state agency will be designated the coordinating agency; when only local approval is required, the AEB is the coordinating agency.
- 15) "emergency action" means operations necessary to avert or mitigate imminent danger to human health, safety or welfare, wildlife, or wildlife habitat.
- 16) "existing use" means the use or uses made of a site as of the date of enactment into Alaska law of this revised AEB CMP.
- 17) "feasible and prudent," when used to modify a standard, means consistent with sound engineering practice and not causing environmental, social, or economic costs that outweigh the public benefit to be derived from compliance with the standard.
- 18) "hazardous substances," "hazardous materials" and "toxic substances" means an element or compound which, when it enters into or upon the water or subsurface land of the state, presents an imminent and substantial danger to the public welfare or health or to the fish, wildlife, vegetation, or any part of the natural habitat in which they are found, and includes, but is not limited to: poisons, pesticides, acids, caustics, infectious or pathological wastes, chemical toilet wastes, radioactive materials, solvents, toxic heavy metals, and oil (a derivative of a liquid hydrocarbon including crude oil, lubricating oil, sludge, oil refuse, or any petroleum-related product or byproduct).
- 19) "important habitat" means areas which support essential life history requirements of fish or wildlife species. These essential areas may encompass one or more of the following: pupping, calving, colonial nesting, spawning, rearing, wintering, migration, important feeding, and haul-out areas; highly productive breeding and nesting areas; sites providing unique population elements including high seasonal use and concentration areas; habitats and use areas regularly associated with threatened or endangered species; unique ecological systems; and areas supporting a large portion of the individuals or species of a fish or wildlife population in the region during specific seasons.
- 20) "land" includes submerged land, wetlands, uplands, and interests therein, unless specifically excluded.
- 21) "local government" means any borough, city or tribal government.
- 22) "major facility" or "major project" means a large scale development activity that has the potential to significantly impact coastal resources.
- 23) "material" means (non-negligible), definite, and demonstrable.

- 24) "Mayor" means the mayor of the AEB.
- 25) "minimize", "minimizing", and "minimized" mean to limit or reduce adverse impacts to the smallest amount, extent, duration, size, or degree by selecting the option which uses the most effective method of doing so without violating sound engineering practices or causing other adverse environmental impacts, social costs, or economic costs of unreasonable magnitude in light of the benefit to be gained.
- 26) "ordinary high water mark" means the mark along the bank or shore up to which the presence and action of the nontidal water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore and indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics.
- 27) "out-of-kind" means to replace the loss or degradation of coastal resources or environments with substitute coastal resources or environments whose characteristics do not closely approximate those destroyed or degraded by a regulated activity.
- 28) "parcel" means the tract of land on which use occurs or is intended to occur. "Parcel" also includes the words: "lot," "plot," "site," or "tract."
- 29) "permit" means a permit, lease, authorization, license, approval, or any other determination necessary for the completion of a project or a discrete phase of a project.
- 30) "person" means, without limit, any natural person, corporation, partnership, organization or association, whether incorporated or otherwise, whatsoever.
- 31) "petroleum" and "petroleum products" mean the same as the definition of "petroleum" found at AS § 46.03.450.
- 32) "Planning Commission" or "Commission" means the AEB Planning Commission.
- 33) "plan" or "this plan" means the AEB coastal management Plan.
- 34) "public need" means a material need of the general public and not that of any private individual or group of individuals. When determining whether there is a material need of the general public, the AEB shall specifically consider the following factors, among others that may apply to particular circumstances:
- a) whether the use improves the delivery of water, sewer, health or other community services;
 - b) whether the use provides or materially contributes to lower-cost fuel or power;

- c) whether the use provides local employment;
 - d) whether the use is related to or supports Inupiat culture and values; and
 - e) whether the use generates local government revenues greater than the demand for local government expenditures by the use.
- 35) "recreational use" means a use undertaken primarily for pleasure, relaxation, amusement, or refreshment of mind or body, as distinguished from commercial or commercial recreational uses. It does not include permanent construction, but may include temporary construction, such as tent platforms and lean-tos.
- 36) "residential use" means a use involving the occupation of a building or structure for living, cooking, sleeping, and accessory uses other than on a temporary basis.
- 37) "resource extraction" means a use involving the removal for commercial purposes of native vegetation (including timber), topsoil, fill, sand, gravel, rock, petroleum, natural gas, coal, metal ore, or any other mineral, and other operations having similar characteristics.
- 38) "significant adverse impacts" means a material negative alteration or disturbance of the resource to be protected by the policy ; or, to disturb or cause a material negative alteration to the ability of a person to engage in the use to be protected by the policy.
- 39) "structure" means anything constructed by humans which is placed, constructed, erected or located on or under the ground, or attached to something fixed to the ground, such as a floating structure anchored to submerged ground, regardless of size, purpose or whether it is temporary or permanent, including:
- a) A building;
 - b) A tower, antenna, pole or similar structure;
 - c) Drilling or excavating apparatus, pipelines, pump stations, conveyor belt and similar structures, but not including lightweight, non-permanent apparatus or construction equipment;
 - d) A foundation, or gravel pad;
 - e) A street, road, ice road, ice pad, parking area, or storage area.
- 41) "subject use" means uses or activities which require one or more local, state or federal permits or approvals; and which is subject to an individual project review under the Alaska State Administrative Code (11 AAC 110), or to a local consistency review in accordance with the policies of the AEB CMP. A finding of consistency with the standards of the ACMP and the AEB CMP, does not imply compliance with any other law of the State or the AEB.
- 42) "temporary use" means use of less than 30 consecutive days.
- 43) "toxic substances" means the same as "hazardous substances", above.

44) "transitional and intertidal areas" means areas subject to periodic or occasional inundation by tides, including coastal floodplains, storm surge areas, tsunami and hurricane zones, and washover channels.

45) "use" means any development or other activity on a parcel of land.

46) "waterfront" means an area one lot wide, or 200 feet wide, whichever is less, along the beach.

4.7 Administrative Policies

Administrative policies are not enforceable and are provided here as advisories to government agencies and applicants.

Administrative Policy 1: Priority Uses

Maintenance and enhancement of fisheries should be given the highest consideration when reviewing proposals for permitted activities or uses which may adversely affect spawning, rearing, migrating or overwintering areas for anadromous fish. Except for public water supplies and domestic uses, maintenance of water quality and quantity for continued productivity of anadromous fish stocks is considered a high priority water use within the AEB.

Administrative Policy 2: Protective Technology

To the extent feasible and prudent, development projects and activities should utilize the most effective technology, equipment and procedures for limiting emissions and for storage, handling, cleanup and disposal of oil and hazardous materials. This policy should be given high priority in permitting industrial, energy and transportation facilities.

Administrative Policy 3: Wastewater Discharges

To the extent feasible and prudent, the discharge of wastewater or other effluent into fresh or marine waters of the AEB should be located in areas of least biological productivity, diversity and sensitivity and where effluent can be controlled, contained or effectively dispersed by currents.

Administrative Policy 4: Refuse Disposal

To the extent feasible and prudent, disposal sites for refuse and putrescible wastes should be a) located in upland sites and at a minimum distance of 500 feet from drinking water sources and fish bearing streams and lakes, b) located to avoid destruction of important habitats, and c) located to avoid creation of an attractive nuisance for wildlife.

Administrative Policy 5: Inclusion of the AEB in Planning Processes

The state and federal governments should provide the AEB, affected communities and residents, and local landowners the opportunity to participate in the planning processes outlined in Chapter 5 of this plan with regard to:

- all proposed state and federal land disposals in the AEB coastal area.
- all major transportation and utility facilities proposed in the AEB coastal area.
- all major energy exploration and development projects proposed in the AEB coastal area.
- all major mining and mineral processing projects proposed in the AEB coastal area.
- all major recreation projects, promotions, and uses proposed in the AEB coastal area.
- all major projects which will impact access points and easement routes on state and federal lands in the NAB coastal area.

Administrative Policy 6: Local Concerns about Subsistence

The AEB shall work with local governments, Native Corporations, and individuals whose lands or subsistence use patterns are affected by a subject use to identify subsistence resource concerns and to develop appropriate restrictions and stipulations.